

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

<b>IN RE APPLICATION OF:</b>	§	<b>ATTY. DOCKET NO.: RPS920030112US1</b>
	§	
<b>SIMON CHU, ET AL.</b>	§	<b>EXAMINER: NEWAY, SAMUEL G.</b>
	§	
<b>SERIAL NO.: 10/675,614</b>	§	<b>CONFIRMATION NO.: 6364</b>
	§	
<b>FILED: 30 SEPTEMBER 2003</b>	§	<b>ART UNIT: 2626</b>
	§	
<b>FOR: LOCATION SENSITIVE</b>	§	
<b>SOFTWARE EXECUTION</b>	§	

**SUBSTITUTE APPEAL BRIEF UNDER 37 C.F.R. 41.37**

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P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

This Substitute Appeal Brief is submitted in support of the Appeal of the Examiner's final rejection of Claims 1-5, 7-13, 15-21, 23 and 25 in the above-identified application. A Notice of Appeal was electronically filed in this case on March 2, 2007 and received in the United States Patent and Trademark Office on March 2, 2007. An original Appeal Brief was filed on April 25, 2007.

This Substitute Appeal Brief is filed in response to a May 30, 2007 Notification of Non-Compliant Appeal Brief, for failing to list in the specification or drawing where support for independent Claim 9 is found. Appellants believe that the present brief provides this information as required.

Appellants do not believe that any additional fees are due for filing this Substitute Appeal Brief. In the event that such fees are due, please charge such fees, as well as any other required fees, to **IBM CORPORATION DEPOSIT ACCOUNT No. 50-0563**.

### **REAL PARTY IN INTEREST**

The real party in interest in the present Application is International Business Machines Corporation, the Assignee of the present application as evidenced by the Assignment set forth at reel 014302, frame 0919.

### **RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to Appellants, the Appellants' legal representative, or assignee, which directly affect or would be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **STATUS OF CLAIMS**

Claims 1-5, 7-13, 15-21, 23 and 25 stand finally rejected by the Examiner as noted in the Final Office Action dated February 6, 2007. The rejections of Claims 1-5, 7-13, 15-21, 23 and 25 under 35 U.S.C. § 103(a) are appealed.

### **STATUS OF AMENDMENTS**

No amendments to the claims have been made subsequent to the February 6, 2007 Final Office Action from which this Appeal is filed.

### **SUMMARY OF THE CLAIMED SUBJECT MATTER**

As recited by Appellants' exemplary independent **Claim 1**, Appellants' invention provides a method for regulating execution of a software according to a physical location of a computer on which the software is to be executed (as supported in the originally filed specification on page 10, lines 1-2). The method comprises the steps of storing a first list of authorized location ranges where a computer is authorized to execute a first software (supported on page 10, lines 3-4), determining a physical location of the computer (supported on page 10, line 5), comparing the physical location of the computer with the first list of authorized location ranges (supported on page 10, lines 6-7), executing the first software only if the physical location of the computer is within a range of one of the authorized location ranges from the first list of authorized location ranges (supported on page 10, lines 8-9), and executing the first software

only if the computer does not receive information derived from a GPS signal (supported on page 8, lines 26-28).

As described in appealed exemplary **Claim 2**, the method may further comprise the steps of, upon determining that the physical location of the computer is not within the first list of authorized location ranges, requesting execution of a second software, the second software having a second list of authorized location ranges (supported on page 10, lines 12-14 of the originally filed specification), comparing the physical location of the computer with the second list of authorized location ranges (supported on page 10, lines 15-16), and executing the second software only if the physical location of the computer is within a range of one of the authorized location ranges from the second list of authorized location ranges (supported on page 10, lines 17-18).

As described in appealed exemplary **Claim 8**, the physical location of the computer may be determined by a local enterprise generated signal that is confined to a single room (as supported on page 11, lines 10-14 of the originally filed specification).

As recited by Appellants' exemplary independent **Claim 9**, Appellants' invention further provides a system for regulating execution of a software according to a physical location of a computer on which the software is to be executed (as supported in the originally filed specification on page 10, lines 1-2). The system comprises means for storing a first list of authorized location ranges where a computer is authorized to execute a first software (supported on page 10, lines 3-4; Figure 1, element 116; Page 4, lines 14-16), means for determining a physical location of the computer (supported on page 10, line 5; Figure 1, element 122; page 4, lines 19-21), means for comparing the physical location of the computer with the first list of authorized location ranges (supported on page 10, lines 6-7; Figure 1, element 102; page 4, line 8), means for executing the first software only if the physical location of the computer is within a range of one of the authorized location ranges from the first list of authorized location ranges (supported on page 10, lines 8-9; Figure 1, element 102; page 4, line 8), and means for executing the first software only if the computer does not receive information derived from a GPS signal (supported on page 8, lines 26-28; Figure 1, element 102; page 4, line 8).

As described in exemplary **Claim 17**, the invention includes a software product, residing on a computer storage medium, for regulating execution of a software according to a physical location of a computer on which the software is to be executed (as supported in the originally filed specification on page 13, lines 7-9). The software product comprises program code for storing a first list of authorized location ranges where a computer is authorized to execute a first software (supported on page 13, lines 10-11), program code for determining a physical location of the computer (supported on page 13, line 12), program code for comparing the physical location of the computer with the first list of authorized location ranges (supported on page 13, lines 13-14), program code for executing the first software only if the physical location of the computer is within a range of one of the authorized location ranges from the first list of authorized location ranges (supported on page 13, lines 15-17), and program code for executing the first software only if a Global Positioning System (GPS) receiver on the computer does not detect a GPS signal (supported on page 8, lines 24-26).

As described in **Claim 25**, the inventive method may further comprise, in response to determining that the second software is not authorized to be executed by the computer at a current physical location of the computer, evaluating subsequent alternate programs until an authorized program is located on the computer, and executing the authorized program on the computer, as supported in the original specification on page 7, lines 15-27.

#### **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

- A. The Examiner's rejection under 35 U.S.C. § 103(a) of Claims 1, 3-5, 7, 9, 11-13, 15 and 23 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Baese et al.* (USPGPub 2002/0082025 – “*Baese*”) is to be reviewed on Appeal.
- B. The Examiner's rejection under 35 U.S.C. § 103(a) of Claims 2 and 10 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Baese et*

*al.* (USPGPub 2002/0082025 – “*Baese*”), and further in view of *Wall* (USPGPub 2002/0017977 – “*Wall*”) is to be reviewed on Appeal.

- C. The Examiner’s rejection under 35 U.S.C. § 103(a) of Claims 8 and 16 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Baese et al.* (USPGPub 2002/0082025 – “*Baese*”) is to be reviewed on Appeal
- D. The Examiner’s rejection under 35 U.S.C. § 103(a) of Claims 17-21 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Baese et al.* (USPGPub 2002/0082025 – “*Baese*”) is to be reviewed on Appeal
- E. The Examiner’s rejection under 35 U.S.C. § 103(a) of Claim 25 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Baese et al.* (USPGPub 2002/0082025 – “*Baese*”), and further in view of *Wall* (USPGPub 2002/0017977 – “*Wall*”) is to be reviewed on Appeal.

## ARGUMENTS

- A. The Examiner's rejection under 35 U.S.C. § 103(a) of Claims 1, 3-5, 7, 9, 11-13, 15 and 23 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Baese et al.* (USPGPub 2002/0082025 – “*Baese*”) is to be reviewed on Appeal.

**The Examiner's rejection of Claims 1, 3-5, 7, 9, 11-13, 15 and 23 is improper since the cited prior art does not teach or suggest all of the limitations of the claims.**

With regards to exemplary **Claim 1**, a combination of the cited art does not teach or suggest “executing the first software only if the client computer does not receive information derived from a GPS signal,” as supported in the present specification as originally filed at paragraph [0025] (page 8, lines 26-28). As stated in this cited passage of the originally filed specification, the “application will only run with the detection of a GPS signal” (detected by a GPS receiver) “or analogous enterprise-generated location signal” (such as that provided by a LAN).

No combination of the cited art teaches or suggests making execution of software contingent upon a computer being “deaf” to a GPS signal.

*Kyotoku* is cited by the Examiner for teaching two manners in which a client computer can receive a GPS signal in a “clean room.” In paragraph [0042], *Kyotoku* teaches that “a GPS antenna is...extended...to the outside where it can receive an electronic wave.” In paragraph [0072], *Kyotoku* teaches that the GPS signal can be received from a “LAN, without the interface for the GPS receiver 108 being embedded” in a computer.” In either scenario, it is clear that the computer contemplated by *Kyotoku* is always able to receive “information derived from a GPS signal,” either directly via a GPS receiver or indirectly via a LAN.

*Baese* teaches, in cited paragraph [0011], that if an area is unable to receive a GPS signal, then a device's location can be derived using local Bluetooth beacons.

However, neither cited art makes execution of software contingent upon an executing computer being “deaf” to information derived from a GPS signal.

As the cited art does not teach or suggest all of the limitations of the presently claimed invention, this rejection is not well founded and should be reversed.

- B. The Examiner’s rejection under 35 U.S.C. § 103(a) of Claims 2 and 10 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Baese et al.* (USPGPub 2002/0082025 – “*Baese*”), and further in view of *Wall* (USPGPub 2002/0017977 – “*Wall*”) is to be reviewed on Appeal.

**The Examiner’s rejection of Claims 2 and 10 is improper since the cited prior art does not teach or suggest all of the limitations of the claims.**

With regards to exemplary **Claim 2**, a combination of the cited art does not teach or suggest “upon determining that the physical location of the computer is not within the first list of authorized location ranges, requesting execution of a second software, the second software having a second list of authorized location ranges,” as supported in the original specification at page 10, lines 12-14.

The Examiner cites paragraph [0103] of *Wall* for teaching this feature. The paragraph, cited in full states:

[0103] It is then determined, at step s515, whether the ("current") access/usage parameters match the ("pre-stored") permission parameters. If the parameters match ("Y"), process 500 allows normal access/usage of the controlled system/commodity, as shown by step s520. If the parameters do not match ("N"), process 500 may prohibit or limit the access/usage, as shown by step s525.

A combination of the cited art does not teach or suggest requesting a second software if the first software is not authorized in authorized location ranges. That is, *Wall*’s teaching that

one can “prohibit or limit the access/usage” does not teach or suggest calling a second authorized software.

As the cited art does not teach or suggest all of the limitations of the presently claimed invention, this rejection is not well founded and should be reversed.

- C. The Examiner’s rejection under 35 U.S.C. § 103(a) of Claims 8 and 16 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Baese et al.* (USPGPub 2002/0082025 – “*Baese*”) is to be reviewed on Appeal

**The Examiner’s rejection of Claims 8 and 16 is improper since the cited prior art does not teach or suggest all of the limitations of the claims.**

With regards to exemplary **Claim 8**, a combination of the cited art does not teach or suggest determining a physical location of a computer using a local enterprise generated signal that is confined to a single room, as supported in the original specification on page 11, lines 13-14.

The Examiner cites paragraph [0011] of *Baese* for teaching that a Bluetooth or similar beacon transmitter can be used indoors where GPS signals are not available, but there is no teaching or suggestion in *Baese*, in combination with the other cited art, for confining a local enterprise generated signal to a single room.

As the cited art does not teach or suggest all of the limitations of the presently claimed invention, this rejection is not well founded and should be reversed.

- D. The Examiner’s rejection under 35 U.S.C. § 103(a) of Claims 17-21 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – “*Kyotoku*”) in view of *Baese et al.* (USPGPub 2002/0082025 – “*Baese*”) is to be reviewed on Appeal



**The Examiner's rejection of Claims 17-21 is improper since the cited prior art does not teach or suggest all of the limitations of the claims.**

The rejection of exemplary **Claim 17** is similar in scope to the rejection of exemplary **Claim 1** discussed above. However, while Claim 1 includes the feature of "executing the first software only if the client computer does not receive information derived from a GPS signal," Claim 17 includes the feature of "executing the first software only if a GPS receiver on the computer does not detect a GPS signal," as supported in the present specification as originally filed at paragraph [0025] (page 8, lines 22-26). That is, if the computer is unable to "hear" a GPS signal, then software execution is prevented. The cited art does not teach or suggest the feature of making execution of software contingent upon a GPS receiver on the computer being unable to detect a GPS signal. Rather, the cited art describes different ways for a computer to locate or derive a GPS signal, but there is no teaching or suggestion that if the computer is unable to locate, derive or otherwise access the GPS signal, the software execution is blocked.

As the cited art does not teach or suggest all of the limitations of the presently claimed invention, this rejection is not well founded and should be reversed.

E. The Examiner's rejection under 35 U.S.C. § 103(a) of Claim 25 as being unpatentable over *Kyotoku* (USPGPub 2003/0110011 – "*Kyotoku*") in view of *Baese et al.* (USPGPub 2002/0082025 – "*Baese*"), and further in view of *Wall* (USPGPub 2002/0017977 – "*Wall*") is to be reviewed on Appeal.

**The Examiner's rejection of Claim 25 is improper since the cited prior art does not teach or suggest all of the limitations of the claims.**

The Examiner cites *Wall* for teaching the feature of "in response to determining that the second software is not authorized to be executed by the computer at a current physical location of the computer, evaluating subsequent alternate programs until an authorized program is located on the computer, and executing the authorized program on the computer," as supported in the original specification on page 7, lines 15-27. *Wall*, and specifically the cited passage at

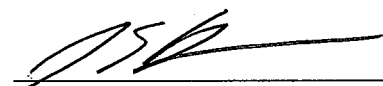
paragraph [0085], states that "access control software may continuously read the geographic position." There is no teaching or suggestion of evaluating alternate programs. That is, *Wall* teaches that a same program might be able to run if the computer is moved to an authorized location. There is no teaching or suggestion of trying other programs until one that is authorized is found.

As the cited art does not teach or suggest all of the limitations of the presently claimed invention, this rejection is not well founded and should be reversed.

### CONCLUSION

Appellants have pointed out with specificity the manifest error in the Examiner's rejections, and the claim language which renders the invention patentable over the various combinations of references. Appellants, therefore, respectfully request that this case be remanded to the Examiner with instructions to issue a Notice of Allowance for all pending claims.

Respectfully submitted,



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## CLAIMS APPENDIX

1. A method for regulating execution of a software according to a physical location of a computer on which the software is to be executed, the method comprising:

storing a first list of authorized location ranges where a computer is authorized to execute a first software;

determining a physical location of the computer;

comparing the physical location of the computer with the first list of authorized location ranges;

executing the first software only if the physical location of the computer is within a range of one of the authorized location ranges from the first list of authorized location ranges; and

executing the first software only if the computer does not receive information derived from a GPS signal.

2. The method of claim 1, further comprising:

upon determining that the physical location of the computer is not within the first list of authorized location ranges, requesting execution of a second software, the second software having a second list of authorized location ranges;

comparing the physical location of the computer with the second list of authorized location ranges, and

executing the second software only if the physical location of the computer is within a range of one of the authorized location ranges from the second list of authorized location ranges.

3. The method of claim 1, further comprising:

upon determining that the computer is not located within an authorized area, generating an alert to a software administrator server of the unauthorized area in which the computer is located while attempting to execute a restricted software.

4. The method of claim 1, further comprising:

rechecking the physical location of the computer after the first software has executed; and

upon determining that the computer is no longer in an area authorized for executing the first software, disabling the first software.

5. The method of claim 4, wherein the first software is an application, and wherein the disabling of the first software is performed by deleting the first software from the computer's system memory.

6. (cancelled)

7. The method of claim 1, wherein the physical location of the computer is determined from a local enterprise generated signal.

8. The method of claim 7, wherein the local enterprise generated signal is confined to a single room.

9. A system for regulating execution of a software according to a physical location of a computer on which the software is to be executed, the system comprising:

means for storing a first list of authorized location ranges where a computer is authorized to execute a first software;

means for determining a physical location of the computer;

means for comparing the physical location of the computer with the first list of authorized location ranges;

means for executing the first software only if the physical location of the computer is within a range of one of the authorized location ranges from the first list of authorized location ranges; and

means for executing the first software only if the computer does not receive information derived from a GPS signal.

10. The system of claim 9, further comprising:

means for, upon determining that the physical location of the computer is not within the first list of authorized location ranges, requesting execution of a second software, the second software having a second list of authorized location ranges;

means for comparing the physical location of the computer with the second list of authorized location ranges, and

means for executing the second software only if the physical location of the computer is within a range of one of the authorized location ranges from the second list of authorized location ranges.

11. The system of claim 9, further comprising:

means for, upon determining that the computer is not located within an authorized area, generating an alert to a software administrator server of the unauthorized area in which the computer is located while attempting to execute a restricted software.

12. The system of claim 9, further comprising:

means for rechecking the physical location of the computer after the first software has executed; and

means for, upon determining that the computer is no longer in an area authorized for executing the first software, disabling the first software.

13. The system of claim 12, wherein the first software is an application, and wherein the means for disabling of the first software is a means for deleting the first software from the computer's system memory.

14. (cancelled)

15. The system of claim 9, wherein the means for determining the physical location of the computer utilizes a local enterprise generated signal.

16. The system of claim 15, wherein the local enterprise generated signal is confined to a single room.

17. A software product, residing on a computer storage medium, for regulating execution of a software according to a physical location of a computer on which the software is to be executed, the software product comprising:

program code for storing a first list of authorized location ranges where a computer is authorized to execute a first software;

program code for determining a physical location of the computer;

program code for comparing the physical location of the computer with the first list of authorized location ranges;

program code for executing the first software only if the physical location of the computer is within a range of one of the authorized location ranges from the first list of authorized location ranges; and

program code for executing the first software only if a Global Positioning System (GPS) receiver on the computer does not detect a GPS signal.

18. The software product of claim 17, further comprising:

program code for, upon determining that the physical location of the computer is not within the first list of authorized location ranges, requesting execution of a second software, the second software having a second list of authorized location ranges;

program code for comparing the physical location of the computer with the second list of authorized location ranges, and

program code for executing the second software only if the physical location of the computer is within a range of one of the authorized location ranges from the second list of authorized location ranges.

19. The software product of claim 17, further comprising:

program code for, upon determining that the computer is not located within an authorized area, generating an alert to a software administrator server of the unauthorized area in which the computer is located while attempting to execute a restricted software.

20. The software product of claim 17, further comprising:

program code for rechecking the physical location of the computer after the first software has executed; and

program code for, upon determining that the computer is no longer in an area authorized for executing the first software, disabling the first software.

21. The software product of claim 20, wherein the first software is an application, and wherein the program code for disabling of the first software deletes the first software from the computer's system memory.

22. (cancelled)

23. The software product of claim 17, wherein the physical location of the computer is determined from a local enterprise generated signal.

24. (cancelled)

25. The method of claim 2, further comprising:

in response to determining that the second software is not authorized to be executed by the computer at a current physical location of the computer, evaluating subsequent alternate programs until an authorized program is located on the computer, and executing the authorized program on the computer.

## **EVIDENCE APPENDIX**

Other than the Office Action(s) and reply(ies) already of record, no additional evidence has been entered by Appellants or the Examiner in the above-identified application which is relevant to this appeal.



### **RELATED PROCEEDINGS APPENDIX**

There are no related proceedings as described by 37 C.F.R. §41.37(c)(1)(x) known to Appellants, Appellants' legal representative, or assignee.